

THE CONSTITUTIONAL HISTORY OF THE UNITED STATES 1776-1826. *Homer Carey Hockett.*¹ *The MacMillan Company, New York, N. Y. 1939. \$3.00*

Volume one of Professor Hockett's contemplated three-volume series on United State Constitutional History develops the story of our first half-century of constitutional experience. It is not only a scholarly treatment of the field but is one which demonstrates that a history book can interpret as well as narrate, and can examine trends without tumbling into pitfalls of tediousness or technicality.

The author's stated purpose is to effect "an intelligent understanding and appraisal of the origin and growth of the principles of our system of government": a purpose rendered especially opportune in view of the extremes of modern contemporary political ideologies. An understanding of our constitutional growth is desirable whether the present calls for retention or modification of the American system.

The subject matter of the volume is divided into three main parts. Part One, entitled "The Evolution of a British Imperial Constitution," reaches back into the history of the English middle class prior to colonization for the background necessary to understand the American colonist. When the colonization era opens, that class which is to become the directive force in the new country as well as in the old, already enjoys a considerable degree of individual liberty—even though such privileges are identified with those of the dominant political class, and political democracy is, as yet, unforeseen.

Such are the significant elements in our constitutional ancestry as the author sees it. Subsequent direct application of the compact theory as a basis for government, further experience with local self government, and frontier conditions combine to nurture and broaden these transplanted ideals.

Part Two, entitled "America Inherits the Imperial Problem," shows how state governments with but minor changes evolve directly from colonial governments. It depicts the origin of the federal system as a natural outgrowth of historical, political, economic, social, and personal factors which were conditioned in the process by experience under the ill-fated Articles of Confederation.

Part Three, "The Establishment of the Constitution" treats the Constitution in practice. Professor Hockett observes that the usages and practices which were developed, such as the machinery for dealing with foreign governments or the relationship of the three departments, are

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more important than any information that can be gained from a mere perusal of the constitution. That document although beatified, as the author says, in part through the "conscious propagandism" of the Federalists, is of such a general character that its interpretation depends on the political philosophy of its administrators. On this basis Professor Hockett then considers the solutions and compromises, as they work out under the influence of majority and minority opinion and the exigencies of active administration, on such conflicts as exist between the doctrine of implied powers and that of sentinelship.

In his last chapter the author considers some of the leading constitutional cases which reach the Supreme Court during the fifty year period. These decisions he places against a vivid background of the occasions and individuals involved. We are reminded that, while the court under Chief Justice Marshall indicated the direction toward federal power which the interpretation of the constitution was to take, contemporary reactions toward emphasis on state rights had sufficient vigor to produce more than one crisis.

Professor Hockett acknowledges in his introduction that his is a story with a moral. "It is that the freedom which independence brought to Americans was only an opportunity at best amid conflicting counsels and clashing interests, to work out their own salvation under the obligation to regard the general welfare, and that the BLESSINGS OF LIBERTY are to be gained and preserved only through incessant pains and vigilance." That the author has proved his moral, the reader will readily agree. While the book does not purport to furnish ultimate solutions of our problems it provides an excellent background for thoughtful reconsideration and further discussion.

A. N. M.

THE LAW OF TRUSTS — *Austin Wakeman Scott. Little
Brown & Co. 4 Vols., 1939.*

No one will question that Professor Scott speaks with authority on the subject of Trusts. He was the reporter of the Restatement of Trusts for the American Law Institute, he has explored most of its difficult areas in law review articles and he has taught this subject for years in the Harvard Law School.

This book will be of the greatest value to the legal profession for many reasons. Current cases reveal the fact that courts are utilizing the Restatement of Trusts. It cannot be neglected by any lawyer in dealing with a trust case. Its use, however, is difficult; its rules being entirely